

## **TAG, the Sunshine Law, the Public Records Law, and E-mail**

The purpose of Florida's Public Records Act and the Government in the Sunshine Law<sup>1</sup> is to allow the public to get access to public documents and to observe and understand the reasoning behind, and basis for, decisions that are made, respectively. Florida's Sunshine Law has been interpreted to apply to appointed advisory committees like the EPC Technical Advisory Committee (TAG) regarding wetland matters. The law generally provides a right of public access to the proceedings, including any gathering of two or more members of the same board/committee to discuss some matter which will foreseeably come before that board for action. This means that:

**No TAG member may discuss with another TAG member business that may come before TAG, except in a public meeting for which there has been proper notice.**

With advances in technology compliance with Sunshine Laws is more complex. Two questions commonly raised are: what topics and what types of discussion are prohibited? TAG members generally are aware of the topics they will discuss and most of their agenda topics are set in advance. However, it may be difficult to know every topic that may be raised at a given meeting. The Sunshine Law prohibits members from outside (non-public) discussion of topics that may foreseeably come before TAG for action, unless the discussion occurs at another noticed public meeting.<sup>2</sup> Discussion between two or more people normally involves a sharing of ideas back-and-forth in an effort to develop a position or reach a decision. Non-public discussions historically occurred in face to face conversation, telephone conversation, and written communication. However, our electronic world has expanded this process through the use of e-mail, blogs, and video postings; all of which could lead to Sunshine Law violations if a member is not properly informed of legal restrictions.

E-mail is commonly used to transmit information generated by third parties (e.g. news articles, memos, summaries, dialogues, research papers, etc.) and as a method for sharing one's own thoughts (e.g. comments, arguments, insights, etc.). While not recommended, one TAG member can write a letter or e-mail to all or any of the other members, but, to avoid violating the Sunshine Law, the recipients **may not** respond. This unilateral communication would allow a member to notify others of his/her intent to raise an issue at a future meeting, but the member should not include their thoughts on the issue. It is recommended you send the topic or document only to EPC staff, who will then place it on the TAG agenda and distribute the document. Transmitting third party public information and opinions of others could be viewed as an expression of one's own preferences, but it is not a form of prohibited/outside of the sunshine "discussion." In sum, limited sharing of publicly available third party information is not subject to the open meeting restrictions unless it is used as a method for circumventing the Sunshine requirements. Do not comment on the information that is sent out. Furthermore, at the following TAG meeting members should make note that this third party information was disseminated by a TAG member to other members and make the information available to the public.

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<sup>1</sup> **Section 286.011 Florida Statutes provides:**

- (1) All meetings of any board or commission ...at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection...
- ...
- (3)(b) Any person who is a member of a board or commission...who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree...

**Section 119.07(1) Florida Statutes provides** that "Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so..."

<sup>2</sup> Two or more TAG members can discuss topics that may come before TAG at other non-TAG public meetings subject to the Sunshine laws since those meetings will also be noticed, open to the public, and generate minutes of their proceedings.

## RECOMMENDED PROCESS FOR INFORMATION SHARING

### 1. Meetings:

All TAG meetings, regular and special, must be properly noticed. Although the law only requires “reasonable notice,” the regular TAG meetings have been scheduled well in advance (currently through May 2008) with public notice on the Estuary Atlas website. Special and sub-committee meetings are arranged as needed and noticed. Typically, meeting agendas are posted on the Estuary Atlas website four to eight days prior to the scheduled meeting date.

### 2. Minutes and Records:

As a sunshine committee, TAG must have minutes for all meetings, regular and special. Recording is not required but is helpful in preparing the minutes. The minutes and related documents are kept at EPC Wetlands Management Division for public inspection

### 3. Other meetings at which TAG members may be in attendance:

TAG members who are on multiple committees (TAG sub-committees, CEAC, WAC, CAC, AEDC, etc.) which discuss issues that come before TAG, need to determine which are sunshine committees and which are not.

- Sunshine meetings are open and the subjects noticed, so discussion between TAG members at such meetings is appropriate, even if the subjects may come before TAG. Other sunshine meetings require minutes so that there is a record of the discussion and documents available to the public. Copies do not need to be made available to TAG unless the member wishes TAG to specifically address them. If so, they will then become TAG records as well.
- Non-Sunshine meetings and social events are not noticed and do not require minutes, but this does not prohibit more than one TAG member from attending and participating. Nonetheless, if a topic is raised that may foreseeably come before TAG for action, the TAG members in attendance may not engage each other in discussion of those topics before, during, or after the meeting.

### 4. E-mail communications:

It is desirable for TAG members to share information, and the speed and efficiency of e-mail is very useful. Discussion of issues and personal comments however, risks constituting an unnoticed meeting and should be avoided. TAG members appear on various e-mail listserves (or distribution lists, mass mailing, etc.) that could have information regarding environmental topics, thus receiving information from outside sources over which they have little control. When there is no communication directly between the TAG members themselves on the subject, receipt of the same information would not be subject to the Sunshine law, unless the listserve or other similar mail out was designed to address TAG issues and then communicate them to TAG members via a mass mailing.

#### E-mail Tips and Procedures:

- E-mails between TAG members should be used sparingly.
- E-mails between TAG members should be limited to providing general third party information that is already available publicly, such as forwarding newspaper or magazine articles, research papers, etc.
- Discussion, comment, or other insights should **not** be included in the transmission of the public information, but may be expressed at the TAG meetings.
- E-mails should be sent to all TAG members that have e-mail, with alternate communication (U.S. Mail) attempted to those who do not.
- Copies of the document should be made and distributed at the next TAG meeting. The sender of the e-mail should bring copies to the meeting for distribution. If the sender includes the EPC Liaison (EPC Wetlands Management Division representative) in the e-mail distribution list, EPC Wetland Management Division will maintain a copy for the public records.
- If an e-mail is sent from a TAG member to a distribution list that includes one or more TAG members, and the subject matter is not an item that would foreseeably come before the committee for a vote, this may not constitute a “discussion” between members. If the e-mail has information that may foreseeably come before TAG (even if the subject matter was not designed to be raised at TAG), it is recommended the e-mail transmission be noted at the next meeting, made available to the public, and a copy provided to the EPC Wetlands Management Division.